



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 951, H.D. 1, S.D. 1, RELATING TO SERVICE OF PROCESS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, March 22, 2013 **TIME:** 10:30 a.m.
LOCATION: State Capitol, Room 016
TESTIFIER(S): David M. Louie, Attorney General, or
Lisa M. Itomura, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General has two comments about this bill.

This bill updates several statutes to clarify who may serve civil process as well as authorizes the Department of Public Safety (PSD) to create a list of independent civil process servers to serve orders to show cause under chapters 603 and 604, Hawaii Revised Statutes (HRS); garnishment under chapter 652, HRS; writs of replevin and attachment under chapter 634, HRS; writs of possession under chapters 501 and 666, HRS; and orders for examination under chapter 636, HRS.

However, while some of the statutes in this bill have been updated to allow independent civil process servers from the list maintained by PSD to serve process, others have not. Sections 3, 4, 7, 9, 12, 14, and 18, which amend sections 603-29, 604-6.2, 633-8, 634-12, 651-1, 652-2, and 654-2, HRS, do not include such authorization. The statutes cited should be further amended to allow service and execution by independent civil process servers from the list maintained by PSD.

In addition, the proposed new section added to chapter 353C, HRS, set forth in section 1 of the bill should be amended to clarify that there is no cause of action against the department or the State. Specifically, the sentence beginning on page 2, line 10, of the bill, should be amended to read "The maintenance of the list shall not create a private cause of action against the department, the State, its officers, and employees."

We respectfully ask that the Committees make the suggested amendments to this bill.

NEIL ABERCROMBIE
GOVERNOR



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No. _____

TESTIMONY ON HOUSE BILL (HB) 951, HOUSE DRAFT (HD) 1, SENATE DRAFT (SD) 1
A BILL FOR AN ACT RELATING TO
THE SERVICE OF PROCESS

By
Ted Sakai, Director
Department of Public Safety

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, March 22, 2013, 10:30 a.m.
State Capitol, Room 016

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

The Department of Public Safety (PSD) **supports** HB 951, HD 1, SD 1 which specifies the persons authorized to serve legal process. HB 951, HD1, SD 1 authorizes the Director of PSD to maintain a list of independent process servers and shields the State and PSD from liability arising from the acts of independent process servers.

Act 142 SLH 2012 amended the Hawaii Revised statutes to allow persons authorized by the rules of the court to also all types of civil process. As a result of this Act, PSD stopped providing lists of process servers to the Collections Bar. We had provided such lists for years prior to 2012. PSD was later informed by the Department of the Attorney General that the term "process" as indicated in the rules of the court did not include the following:

1. Order to Show Cause pursuant to Sections 603 and 604, HRS
2. Writs of Attachment and Execution pursuant to Section 631, HRS
3. Garnishment documents pursuant to Section 652, HRS
4. Writs of Replevin pursuant to Section 634, HRS and

5. Writs of Possession pursuant to Section 666, HRS.

The Collections Bar has indicated that it is now more difficult to identify process servers and obtain their services. Moreover, there is an increased reliance on Deputy Sheriffs, who are already undermanned. However, PSD has no authority to reinstate and maintain the list. Also, we are concerned any implication that a process server on the list is qualified and/or authorized by our Department.

The amendments being proposed in HB 951, HD 1, SD 1 will give PSD time to work with interested parties in coming up with a more permanent solution to civil process servers.

Thank you for the opportunity to testify on this matter.